

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

VERONICA V. BURROLA,

Plaintiff,

v.

No. 10-CIV-770 GBW

SOCIAL SECURITY
ADMINISTRATION, Michael
J. Astrue, Commissioner of SSA,

Defendant.

ORDER GRANTING MOTION TO RECONSIDER AND
MOTION TO PROCEED *IN FORMA PAUPERIS*

THIS MATTER is before the Court of Plaintiff's Motion to Reconsider filed on September 17, 2010. *Doc. 7.* Plaintiff, who is seeking judicial review of the denial of her application for social security benefits, filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915, on August 17, 2010. *Doc. 2.* On September 2, I filed an Order denying Plaintiff's Motion because Plaintiff claimed a monthly net income of \$1,348.00. *Doc. 6.* I find that Plaintiff's Motion to Reconsider is well taken and it shall be granted.

"In order to succeed on a motion to proceed *IFP*, the movant must show a financial inability to pay the required filing fees, as well as the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised in the action." *Lister v. Dep't of Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005) (citation omitted). Section 1915(a)(1)

applies to all plaintiffs seeking *IFP* status. *Id.*; see also *Griffin v. Zavaras*, 336 F. App'x 846, 849 n.2 (10th Cir. 2009).

In her financial affidavit, Plaintiff claims a monthly net income of \$1348.00 and total monthly payments of \$234.00. *Doc. 2*. In her Motion to Reconsider, Plaintiff informed the Court that this income is comprised entirely from her children's Supplemental Security Income that Plaintiff receives as the representative payee of her two disabled minor child. *Doc. 7*. As their representative payee, Plaintiff must keep the funds received from her children's disability benefits separate from any of her funds, of which Plaintiff asserts she has none. *Id.* Plaintiff may only use the disability benefits on the children's behalf for such things as food, shelter, clothing, medical care, and personal comfort items. 20 C.F.R. §§ 404.2035, 404.2040. Additionally, Plaintiff would be subject to restitution under 20 C.F.R. § 404.2041 in addition to possible federal and state criminal laws if funds from her children's disability benefits were used to pay for Plaintiff's own legal costs. Accordingly, I find that Plaintiff has shown a financial inability to pay the required filing fees. *Lister*, 408 F.3d at 1312.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Reconsider (*Doc. 7*) is **GRANTED** and Plaintiff's Motion to Proceed *In Forma Pauperis* pursuant to 28 U.S.C. § 1915 (*Doc. 2*) is **GRANTED** and Plaintiff may proceed without prepayment of costs or other fees or the necessity of giving security therefor.



UNITED STATES MAGISTRATE JUDGE